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**COMMERCIAL LEASE NEWSLETTERS**

CURRENT ISSUES IN REGARD TO COMMERCIAL LEASES  
IN TODAY'S TROUBLED REAL ESTATE MARKETPLACE

“CONSTRUCTIVE EVICTION”

PART IV

This is the fourth in the series of real estate issues relating to problems facing Commercial Property Managers, Landlords and Commercial Tenants in today's troubled economic times. In this instance, many Tenants are finding that the Landlords are failing to provide the necessary services as required under the lease. The Landlords may be failing to provide common area maintenance, repair, and replacement of certain necessary components as well as failing to operate the facility conducive of the terms and conditions of the lease.

In many instances certain Landlords are simply cutting back on expenditures based upon their inability to economically and viably operate the building which has a negative impact and effect upon the Tenant. This could be even in a situation in which an entire building or center is under triple net leases since there may be vacancies or defaults requiring the Landlord to advance the common area maintenance short falls. In the event that the premises are not maintained to a standard suitable for the use and occupancy of the Tenant, the Tenant can pursue an action against the Landlord for constructive eviction.

Constructive eviction occurs when a Tenant is essentially deprived of the beneficial enjoyment of the leased premises when they are rendered unsuitable for occupancy for the purpose for which they are leased. Barton v. The Mitchell Company 507 So 2d 148 (4<sup>th</sup> DCA 1987). Constructive eviction may be based upon the Landlord failing to discharge its responsibility for maintenance and repair of the building as well as maintenance and repair of the roof. Also, if the Landlord fails to maintain the condition of the premises, fails to provide for pest control and extermination and otherwise creates

a situation in which the premises are certainly not conducive to a business atmosphere or alternatively are not considered normal business occupancy. In such event, the Tenant could assert the fact that the premises are not “habitable” as defined by the lease terms and the facts of the Tenant. In such event, the Tenant has a number of options. The case law is clear in regard to constructive eviction:

It is fundamental black letter law in Florida that a notice of and an opportunity to rectify conditions allegedly constituting constructive eviction are a prerequisite for any action based on the alleged eviction. 32 Am Jur. Landlord/Tenant Section 259, 263, 264 (1941 Supp. 1962), Richards v. Dodge, 150 So. 2d 477 (2 DCA 1963).

Construction eviction is a separate cause of action but can also be a basis for a claim of breach of quiet enjoyment [See Newsletter regarding “Quiet Enjoyment”]

In the event a claim for constructive eviction exists, the Tenant should seek legal advice from a real estate litigation attorney conversant with this area and pursue all right and remedies available to it to minimize and mitigate the Tenant’s damages based upon the Landlord failing to honor the terms and conditions of the lease.